

Article - Public Safety

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§13A–604.

(a) In this section, “victim” means a person who:

(1) is alleged to have suffered a direct physical, emotional, or pecuniary harm as a result of the matters set forth in a charge or specification being considered; and

(2) is named in one of the specifications.

(b) (1) A charge or specification may not be referred to a general court–martial for trial until a thorough and impartial investigation of all the matters set forth therein has been made.

(2) This investigation shall include:

(i) inquiry as to the truth of the matter set forth in the charges;

(ii) consideration of the form of charges; and

(iii) a recommendation as to the disposition which should be made of the case in the interest of justice and discipline.

(c) (1) The accused shall be advised of the charges against the accused and of the right to be represented at the investigation by counsel.

(2) The accused has the right to be represented at the investigation as provided in § 13A–703 of this title and in regulations prescribed under that section.

(3) At the investigation, full opportunity shall be given to the accused to cross–examine witnesses against the accused, if they are available, and to present anything the accused may desire in the accused’s own behalf, either in defense or mitigation, and the investigating officer shall examine available witnesses requested by the accused.

(4) If the charges are forwarded after the investigation, they shall be accompanied by a statement of the substance of the testimony taken on both sides and a copy of the charges shall be given to the accused.

(d) (1) If an investigation of the subject matter of an offense has been conducted before the accused is charged with the offense, and if the accused was present at the investigation and afforded the opportunities for representation, cross-examination, and presentation prescribed in subsection (c) of this section, no further investigation of that charge is necessary under this section unless it is demanded by the accused after the accused is informed of the charge.

(2) A demand for further investigation entitles the accused to recall witnesses for further cross-examination and to offer any new evidence in the accused's own behalf.

(e) If evidence adduced in an investigation under this section indicates that the accused committed an uncharged offense, the investigating officer may investigate the subject matter of that offense without the accused having first been charged with the offense if the accused is:

(1) present at the investigation;

(2) informed of the nature of each uncharged offense investigated;
and

(3) afforded the opportunities for representation, cross-examination, and presentation prescribed in subsection (b) of this section.

(f) The requirements of this section are binding on all persons administering this title, but failure to follow the requirements does not constitute jurisdictional error.

(g) Under regulations prescribed by § 13A-701 of this title, a preliminary hearing need not be held if the accused submits a written waiver to the convening authority and the convening authority determines that a hearing is not required.

(h) (1) A preliminary hearing under this section shall be conducted by an impartial hearing officer, who:

(i) whenever practicable, shall be a judge advocate who is certified under § 13A-506 of this title; or

(ii) when it is not practicable to appoint a judge advocate because of exceptional circumstances, is not a judge advocate so certified.

(2) In the case of the appointment of a hearing officer under paragraph (1)(ii) of this subsection, a judge advocate who is certified under § 13A-506 of this title shall be available to provide legal advice to the hearing officer.

(3) Whenever practicable, the hearing officer shall be equal in grade or senior in grade to military counsel who are detailed to represent the accused or the Government at the preliminary hearing.

(i) After a preliminary hearing under this section, the hearing officer shall submit to the convening authority a written report, accompanied by a recording of the preliminary hearing under subsection (k) of this section, that includes the following:

(1) for each specification, a statement of the reasoning and conclusions of the hearing officer with respect to determinations under subsection (b)(2) of this section, including a summary of relevant witness testimony and documentary evidence presented at the hearing and any observations of the hearing officer concerning the testimony of witnesses and the availability and admissibility of evidence at trial;

(2) recommendations for any necessary modifications to the form of the charges or specifications;

(3) an analysis of any additional information submitted after the hearing by the parties or by a victim of an offense, that, under rules prescribed under § 13A–701 of this title, is relevant to disposition under §§ 13A–601 and 13A–604 of this subtitle; and

(4) a statement of action taken on evidence adduced with respect to uncharged offenses, as described in subsection (l) of this section.

(j) (1) (i) The accused shall be advised of the charges against the accused and of the accused's right to be represented by counsel at the preliminary hearing under this section.

(ii) The accused has the right to be represented at the preliminary hearing as provided in § 13A–703 of this subtitle and in regulations prescribed under that section.

(2) The accused may cross-examine witnesses who testify at the preliminary hearing and present additional evidence that is relevant to the issues for determination under subsection (b)(2) of this section.

(3) (i) A victim may not be required to testify at the preliminary hearing.

(ii) 1. A victim who declines to testify shall be deemed to be not available for purposes of the preliminary hearing.

2. A declination under this paragraph may not serve as the sole basis for ordering a deposition under § 13A–714 of this title.

(4) The presentation of evidence and examination, including cross-examination, of witnesses at a preliminary hearing shall be limited to the matters relevant to determinations under subsection (b)(2) of this section.

(k) (1) A preliminary hearing under subsection (b) of this section shall be recorded by a suitable recording device.

(2) The victim may request the recording and shall have access to the recording under such rules as are prescribed in § 13A–701 of this title.

(l) If evidence adduced in a preliminary hearing under subsection (b) of this section indicates that the accused committed an uncharged offense, the hearing officer may consider the subject matter of that offense without the accused having first been charged with the offense if the accused is:

(1) present at the preliminary hearing;

(2) informed of the nature of each uncharged offense considered; and

(3) afforded the opportunities for representation, cross-examination, and presentation consistent with subsection (i) of this section.

(m) (1) The requirements of this section are binding on all persons administering this title, but failure to follow the requirements does not constitute jurisdictional error.

(2) A defect in a report under subsection (i) of this section is not a basis for relief if the report is in substantial compliance with that subsection.

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